

UNITED STATES BANKRUPTCY COURT
 EASTERN DISTRICT OF CALIFORNIA
 SACRAMENTO DIVISION

In re)	Case No. 15-28574-A-13J
)	
JOHN DYNOWSKI,)	
)	
)	Date: October 31, 2016
Debtor.)	Time: 1:30 p.m.
)	
)	

MEMORANDUM

Leslie Richards, the debtor's attorney, filed this case without being a member of the bar of the District Court of the Eastern District of California, and then failed to appear in its proper prosecution. Sanctions are warranted.

I

This matter originally came before the court as a motion by the chapter 13 trustee (Docket Control No. JPJ-1) seeking to compel attorney Leslie Richards to appear at the meeting of creditors. This request was made because Ms. Richards failed to appear on December 22, 2015 at the initial meeting. Although the debtor, John Dynowski, appeared at that meeting, Ms. Richards' absence required the trustee to continue the meeting to January 21, 2016.

In connection with the January 4 hearing on the trustee's motion, the court noted two additional problems: Ms. Richards filed this case even though she was not admitted to the bar of the Eastern District of California, and she had not filed the fee

1 disclosure required by Fed. R. Bankr. P. 2016 and 11 U.S.C. §
2 329.

3 Despite continuing the hearing on the trustee's motion to
4 January 19 to give Ms. Richards an opportunity to address these
5 issues, Ms. Richards failed to appear.

6 While the court dismissed this bankruptcy case on January 19
7 at the request of the debtor, it reserved jurisdiction over the
8 issues of Ms. Richards' compensation and the appropriateness of
9 sanctions for her failure to represent her client and appear in
10 the proper prosecution of this case. See Docket 30.

11 To that end, the court issued an Order to Show Cause on
12 January 28, 2016 (see Docket 34) directing Ms. Richards to appear
13 in person at a hearing on February 29 to determine whether she
14 should be sanctioned for:

15 a. Failing to appear at the meeting of creditors on
16 December 22, 2015;

17 b. Filing this case even though she was not admitted
18 to the bar of the Eastern District of California; and

19 c. Failing to file the fee disclosure required by
20 Fed. R. Bankr. P. 2016 and 11 U.S.C. § 329(a).

21
22 II

23 Ms. Richards responded to the Order to Show Cause by
24 admitting she was not a member of the bar of the Eastern District
25 of California when this case was filed. Her excuse is that she
26 "did not realize [she] had to be admitted to the Eastern District
27 nor was the issue previously brought up. . . ."

28 Ms. Richards also maintained she was unable to appear at the

1 meeting of creditors because of recent knee surgery.

2 Acknowledging she nonetheless had an obligation to represent the
3 debtor at the meeting, Ms. Richards states that she failed to
4 arrange for substitute counsel because her law clerk neglected to
5 calendar the meeting.

6 Finally, Ms. Richards admitted that she did not file a fee
7 disclosure in this case. However, she believes no disclosure was
8 required because she charged no fee for Mr. Dynowski's
9 representation.

10
11 III

12 In the course of considering Ms. Richards' response to the
13 August 11 Order to Show Cause, the court determined from a search
14 of its electronic case files that Ms. Richards was the attorney
15 of record for debtors in fourteen cases in this district
16 commenced over a 5-year period, from January 18, 2011 through
17 January 21, 2016.

18 These cases show a remarkably consistent pattern of abuse -
19 failing to file fee disclosures, failing to file required
20 documents, and failing to attend meetings of creditors. The
21 court concludes from the record in the case now before it, as
22 well as these prior cases, that Ms. Richards is aiding debtors in
23 an abuse of the bankruptcy process that is calculated to hinder,
24 delay, and defraud lenders in their efforts to foreclose and/or
25 repossess their real property collateral.

26 This table summarizes the cases filed by Ms. Richards.
27
28

Case No./ Debtor	Chap.	2016(b) filed/ amount paid	Disposition	Foreclosure/ Eviction?	First meeting attended?
16-10139 Hyatt	13	yes - \$2500	filed 1/21/16 dismissed 2/19/16 before meeting	Dkt. #41. Case filed 1 day before answer due in unlawful detainer	NA
15-14857 Starr	13	yes - \$750	filed 12/20/15 dismissed 4/8/16	Dkt #52. Home in foreclosure	Counsel and debtor failed to appear
16-10088 Starr	7	no	filed 11/19/15 dismissed 3/3/16 before meeting	Dkt #40. Debtor asks for dismissal because he has "discovered a mortgage modification program"	NA
16-20084 Tracy	7	no	filed 11/18/15 dismissed 2/23/16	Dkt #17. Home in foreclosure	Counsel and debtor failed to appear
15-28574 Dynowski	13	no	filed 11/3/15 voluntarily dismissed 6/20/16	Dkt #47. Case filed 1 day before hearing on summary judgment motion in unlawful detainer	Debtor appeared but counsel did not
15-22785 Tracy	7	no	filed 4/6/15 dismissed 4/24/15 before meeting	See Case No 16-20084	NA
15-21755 ¹ Dynowski	7	yes - \$1000	filed 3/5/15 discharge 7/20/15	See Case Nos. 15-28574 & 14-31822	Counsel and debtor appeared

¹ A comparison of the three petitions filed by Debtor Dynowski shows his signature on two petitions, Case Nos. 14-31822 and 15-28574, is a "wet ink" signature, but the petition in Case No. 15-21755 is signed "/s/ John A Dynowski". This court's local rules permit either form of signature. See Local Bankruptcy Rule 9004-1(c)(1)(B). However, when the latter form is used, Local Bankruptcy Rule 9004-1(c)(1)(D), provides:

"When "/s/ Name" . . . is used in an electronically filed document to indicate the required signature(s) of persons other than that of the registered user, the registered user shall retain the originally signed document in paper form for no less than three (3) years following the closing of the case. On request of the Court, U.S. Trustee, U.S. Attorney, or other party, the registered user shall produce the originally signed document(s) for review. The failure to do so may result in the imposition of sanctions on the Court's own motion, or upon motion of the case trustee, U.S. Trustee, U.S. Attorney, or other party."

At the hearing on the order to show cause both Ms. Richards and Mr. Dynowski admitted he never signed the petition in Case No. 15-21755. Ms. Richards does not have a copy of the petition with Mr. Dynowski's wet ink signature.

14-31822 Dynowski	7	no	filed 12/4/15 dismissed 12/15/14 before meeting	Dkt #35. Case filed 6 minutes before home foreclosure	NA
13-31031 Rodriguez	7	no	filed 8/22/13 dismissed 9/3/13 before meeting		NA
13-30462 Manzo	7	no	filed 8/8/13 dismissed 8/19/13 before meeting		NA
13-15329 Gutierrez	11	no + incomplete employment application	filed 8/5/13 dismissed 10/3/13 on UST motion before meeting	Dkt #24. Creditor attempting to foreclose on rental properties.	NA
11-90725 Pinheiro	7	yes - \$1000	filed 2/28/11 discharge 6/6/11	Dkt #19. Foreclosing creditor attempting to enforce writ of possession	Counsel and debtor appeared
11-24004 Ascencion	13	no	filed 2/27/11 dismissed 3/8/11 before meeting	See next case.	NA
11-21249 Ascencion	7	yes - \$1200	filed 1/18/11 dismissed 2/8/11 before meeting	Dkt #1. Schedules list under-secured home mortgage. No foreclosure or eviction noted on docket.	NA

1 A review of the dockets of these cases shows the following:

- 2 • Over a 5-year period, Ms. Richards filed twelve
3 bankruptcy cases in the Eastern District of
4 California. Two more cases, Case Nos. 16-10088
5 and 16-20084, were filed in the Central District
6 of California on November 18 and 19, 2015 and then
7 transferred to the Eastern District at the
8 debtors' requests. All fourteen cases were filed
9 for individual consumer debtors. Nine of these
10 cases were filed under chapter 7, four under
11 chapter 13, and one under chapter 11.
12
- 13 • In only 2 of the 14 cases, both chapter 7 cases,
14 did the debtor receive a discharge. One case was
15 voluntarily dismissed. Eleven cases were
16 dismissed because the debtors failed to file
17 required statements, schedules, or a proposed
18 plan, or failed to appear at the meeting of
19 creditors.
20
- 21 • In none of the reorganization cases, whether under
22 chapter 11 or 13, did the debtor confirm, much
23 less complete, a plan.
24
- 25 • In 9 of the 14 cases, Ms. Richards failed to file
26 the fee disclosure required by 11 U.S.C. § 329(a)
27 and Fed. R. Bankr. P. 2016(b).
28

- 1 • In the five cases where disclosures were filed,
2 Ms. Richards received fees of \$2,500, \$750,
3 \$1,000, \$1,000 and \$1,200 before the cases were
4 filed. Two of these five cases were dismissed
5 before the meeting of creditors, one was dismissed
6 because Ms. Richards and her client failed to
7 appear at the meeting of creditors, and in two
8 cases the debtors received chapter 7 discharges.
9
- 10 • 11 of the 12 cases filed in the Eastern District
11 (this excludes the two cases filed in the Central
12 District and then transferred to the Eastern
13 District) were filed by Ms. Richards even though
14 she was not a member of the bar of the Eastern
15 District of California. She became a member on
16 January 14, 2016, after this court noted in a
17 ruling on a motion in Case No. 15-28574 that Ms.
18 Richards was not a member of its bar.
19
- 20 • 9 of the 14 cases were dismissed before the first
21 meeting of creditors could be conducted. Of the 5
22 cases not dismissed prior to the meeting, Ms.
23 Richards failed to appear at the meeting in 3
24 cases.
25
- 26 • 10 of the 14 cases were filed to delay a home
27 foreclosure or a post-foreclosure unlawful
28

1 detainer action.² This is evident from motions or
2 objections filed by the foreclosing creditor as
3 well as admissions in documents filed by the
4 debtors. The dockets of the other four cases give
5 no clue as to whether those debtors were
6 attempting to delay foreclosures or unlawful
7 detainer actions. Each of these four cases (Case
8 Nos. 13-31031, 13-30462, 11-24004, and 11-21249)
9 was dismissed soon after filing because the debtor
10 failed to file required lists, statements, or
11 schedules. Possibly because these cases were
12 dismissed soon after filing, nothing was filed,
13 either by the debtor, a creditor, or the trustee,
14 indicating that the debtor's home had been
15 foreclosed or was in foreclosure.

- 16
- 17 • Ms. Richards filed more than one bankruptcy case
18 for four different debtors: she filed two cases
19 for debtor Starr, two for debtor Tracy, three for
20 debtor Dynowski, and two for debtor Ascencion.³
- 21

22 Not on the chart are three cases filed by Ms. Richards on
23 behalf of Debtors Hyatt, Rodriquez, and Gutierrez in other
24 districts.

25

26 ² But see footnote 3 below.

27 ³ As discussed below, if cases filed in other districts
28 are included, Ms. Richards has filed multiple cases for seven
different debtors.

1 Ms. Richards filed Case No. 13-14248, a chapter 7 petition,
2 for Debtor Gutierrez in the Central District of California on
3 June 25, 2013. The case was dismissed on July 26, 2013 because
4 the debtor failed to file all mandatory lists, schedules and
5 statements. This dismissal was followed by the filing of a
6 second case, this time under chapter 11, in the Eastern District
7 on August 5, 2013. The chapter 11 case was dismissed on October
8 3, 2013 on the motion of the United States Trustee. The debtor
9 failed to schedule all real property assets, file monthly
10 operating reports, provide proof of insurance, and provide copies
11 of financial records to the United States Trustee.

12 Ms. Richards filed Case No. 15-13055 on behalf of Debtor
13 Hyatt in the Central District of California on September 14,
14 2015. That case was dismissed just nine days later when the
15 debtor failed to file a statement of social security number and a
16 master address list. A second case, Case No. 16-10139, was filed
17 for Debtor Hyatt in the Eastern District on January 21, 2016. It
18 was dismissed on February 19 when the debtor failed to propose a
19 chapter 13 plan.

20 Debtor Rodriguez filed a chapter 13 petition, Case No. 13-
21 45399, on September 25, 2013 in the Northern District of
22 California with the assistance of Ms. Richards. The case was
23 dismissed due to the debtor's failure to file all lists,
24 schedules, and statements. The Northern District case was filed
25 less than three weeks after Case No. 13-31031 filed in the
26 Eastern District was dismissed because the debtor had failed to
27
28

1 file all lists, schedules, and statements.⁴

3 IV

4 Ms. Richards explanation of, and justifications for, her
5 conduct in this case, particularly when evaluated in light of the
6 other cases she filed in this district, do not hold water.

8 A. Admission to the Bar of the Eastern District

9 Ms. Richards maintains that she did not know she was
10 required to be admitted to the bar of this court before
11 practicing in it. Further, she maintains that no one told her
12 she was required to be a member of the court's bar.

13 It is difficult to believe that any attorney is unaware of
14 the necessity of being admitted to the bar of a court in which
15 they intend to practice. Nor does the court believe that this
16 requirement was never brought to Ms. Richards' attention.

17 Ms. Richards filed documents in this case electronically.
18 In order to be authorized to file electronically, she had to

19 _____
20 ⁴ Interestingly, document #14 on the docket of the
21 Northern District case, a motion to vacate the dismissal, admits
22 that the case was filed to halt a foreclosure of the debtor's
23 home on September 26, 2013, the day after the case was filed.
24 The chart above indicates that there is nothing on the docket of
25 Eastern District Case No. 13-31031 indicating that the debtor was
attempting to halt a foreclosure or eviction. With the admission
made in the Northern District case, this means that 11 of the 14
cases in the Eastern District were filed to stop foreclosures or
evictions.

26 It also is interesting that the motion to vacate the
27 dismissal of the Northern District case indicates that documents
28 were not filed timely because a paralegal in Ms. Richards' office
had failed to calendar the filing deadline. This is reminiscent
of the excuse offered in the case now before the court for the
failure to appear at the meeting of creditors.

1 register with the clerk of this court. The registration process
2 is done over the Internet. Ms. Richards' registration form was
3 received by the clerk on December 15, 2010. A copy of it is
4 appended to Docket 97, the court's earlier August 11 Memorandum.

5 Section 1 of Ms. Richards' registration form advises that an
6 attorney must be a member of the bar of this court in order to
7 file documents electronically. And, in section 2, "Eligibility",
8 Ms. Richards represented to the clerk that she was "an attorney
9 admitted to the bar of the U.S. District Court for the Eastern
10 District of California and currently [is] in good standing."

11 The registration form makes clear that in order to file
12 documents electronically, an attorney must be a member of this
13 court's bar, or admitted to it *pro hac vice*, or be exempt from
14 admission. Hence, even if it somehow escaped Ms. Richards'
15 notice over 35 years of practicing law that admission to the bar
16 of a federal court was necessary before filing a case in it, the
17 registration process clearly informed her of the requirement.

18 Ms. Richards misrepresented in 2010 that she was a member of
19 this court's bar. This was untrue when this case was filed, and
20 it was untrue when she filed twelve other cases over a five year
21 period. Ms. Richards was not admitted to this court's bar until
22 January 14, 2016.

23
24 B. Failure to Appear at the Meeting of Creditors

25 Ms. Richards does not deny that she failed to appear at the
26 meeting of creditors. She claims she was medically unable to
27 appear. But, if Ms. Richards' evidence is to be believed, this
28 is not the reason for her nonappearance. She did not appear

1 because her law clerk failed to calendar the meeting.

2 The court believes none of this. Neither Ms. Richards nor
3 anyone in her stead ever intended to appear at the meeting
4 because the debtor never intended to prosecute this case, his
5 third in the space of eleven months. This case was intended only
6 to delay and harass a lender who had foreclosed on the debtor's
7 home.⁵ The debtor's first case was filed to stop the lender's
8 nonjudicial foreclosure and his third case was filed to halt an
9 adverse result in its unlawful detainer action.

10 This is corroborated by the other cases filed by Ms.
11 Richards in this court.

12 - Most were not prosecuted and most were filed on behalf of
13 debtors hoping to derail foreclosures and/or evictions.

14 - Ten of fourteen cases were dismissed prior to the meeting
15 of creditors because schedules, statements, lists and/or a
16 plan were not filed.

17 - Two more of the fourteen cases were dismissed after the
18 meeting because the debtor and counsel failed to appear at
19 it.

20 - Ms. Richards or another attorney in her place appeared at
21 the meeting of creditors in only two cases out of fourteen.

22 - Perhaps most telling is that the fact that no
23 reorganization case filed by Ms. Richards in this court over
24 the last five years has resulted in the confirmation of a
25

26 ⁵ The court previously authored a lengthy written ruling
27 detailing the debtor's bad faith filing of cases in this court to
28 hinder and delay Pennymac Holdings' nonjudicial foreclosure of
his home and his later eviction. See Case No. 14-31822, Docket
#57.

1 plan.

2 Of course, there is nothing wrong with filing a bankruptcy
3 case that halts a foreclosure or an eviction. This rises to
4 contumacious conduct when the case is used to hinder, delay, or
5 defraud creditors and without any genuine intent and effort to
6 obtain a discharge and/or reorganize debt.

7 That is exactly what the debtor was doing in his first and
8 third cases filed with Ms. Richards' help. These cases were
9 filed on the eve of a foreclosure or an eviction and then the
10 debtor failed to properly prosecute the cases by filing required
11 documents and appearing at the meeting of creditors. The debtor
12 was hoping to delay his home lender as long as possible by
13 acquiring the automatic stay of 11 U.S.C. § 362(a) without
14 prosecuting the bankruptcy case.

15 And, as the chart above corroborates, Ms. Richards is all
16 too familiar with this tactic.

17
18 C. Failure to Disclose Fees

19 Ms. Richards did not file the fee disclosure required by
20 section 329(a) and Rule 2016(b) because she was paid nothing by
21 the debtor for work in connection with this case. Assuming this
22 is true, Ms. Richards nonetheless was required to file a
23 disclosure indicating nothing was paid to her.

24 Section 329(a) and Rule 2016(b) require every debtor's
25 attorney to file a statement of the compensation paid and to be
26 paid for services rendered in connection with the bankruptcy
27 case. This disclosure must be made with reference to
28 compensation paid or agreed to be paid within the year prior to

1 the filing of the bankruptcy case or after it is filed.
2 Disclosure is mandatory and it must continue throughout the case.
3 See Turner v. Davis, etc. (In re Investment Bankers, Inc.), 4
4 F.3d 1556 (10th Cir. 1993).

5 This disclosure permits the court to scrutinize compensation
6 paid to a debtor's attorney even in the absence of an objection
7 to it. The court is charged with insuring that compensation is
8 reasonable. See 11 U.S.C. § 329(b).

9 If an attorney enters into an agreement to file a bankruptcy
10 case for no compensation, such must be disclosed. The absence of
11 a disclosure would only create an ambiguity - did counsel get
12 paid but fail to make the disclosure, or was counsel representing
13 the debtor without charge? There would be no way to determine
14 what the attorney and the debtor had agreed to without issuing an
15 order and requiring the parties to appear and explain themselves.

16 Ms. Richards is in business. She practices law as a
17 business. She does not operate a pro bono legal clinic.

18 The court does not believe Ms. Richards was paid nothing for
19 her services in this case. Ms. Richards represented the debtor
20 in a state court unlawful detainer action. Before that action
21 was filed, she represented him outside of the bankruptcy court in
22 connection with a nonjudicial foreclosure. She was paid a fee
23 for these services. In fact, the debtor and his partner gave Ms.
24 Richards a debit card linked to one of their accounts so she
25 could draw money for her fees.

26 In the effort to stop the foreclosure and the subsequent
27 eviction, Ms. Richards filed three bankruptcy cases for the
28 debtor, including the one now before the court. Given the

1 failure to propose a plan, the failure to file schedules and
2 statements, and the failure of an attorney to appear the meeting
3 of creditors, it is a reasonable surmise that this case was filed
4 just to acquire the automatic stay in order to prolong and delay
5 the unlawful detainer action. Ms. Richards and her client never
6 intended to prosecute this case to its conclusion.

7 This conclusion is buttressed by the chart above which shows
8 Ms. Richards' repeated misuse of the automatic stay over the last
9 five years. Whatever this debtor (and the other debtors) paid
10 Ms. Richards, and however it was nominally accounted for by her,
11 it was paid in contemplation of a bankruptcy petition filed to
12 derail or delay a foreclosure and eviction. When paying Ms.
13 Richards for her services, it was within the fair contemplation
14 of the parties that a bankruptcy case could be filed. See e.g.,
15 In re Gage, 394 B.R. 184, 194 (Bankr. N.D. Ill. 2008).
16 Therefore, full disclosure of that compensation should have been
17 made to this court by Ms. Richards.

18 Finally, the fact that Ms. Richards ostensibly charged
19 nothing for this bankruptcy case (and eight other cases filed
20 over the last five years in this district) is corroboration for
21 the lack of good faith in filing it. She had no intention of
22 filing schedules, statements, or a plan, appearing at the
23 meeting, or otherwise prosecuting the case. It was filed purely
24 to harass the foreclosing creditor and to delay an eviction.

25
26 V

27 The \$1,000 sanction assessed against Ms. Richards in the
28 court's August 11 Order was for the conduct described in Part VI

1 of this Memorandum. That order also directed Ms. Richards to
2 show cause why she should not be sanctioned further for filing
3 this case for the apparent improper purpose of harassing,
4 delaying, and causing unnecessary expense to the debtor's
5 foreclosing home lender. The Memorandum accompanying the August
6 11 order included all of the information summarized above
7 concerning the other cases filed by Ms. Richards in this district
8 over the last five years.

9 After considering her response to the August 11 order, and
10 based on the findings summarized above, the court concludes that
11 clear and convincing evidence establishes Ms. Richards' bad faith
12 and willful misconduct as follows:

13 1. Ms. Richards filed this case, and eleven others, without
14 being a member of the bar of this court. In addition, she
15 appeared in two cases filed in other districts and then
16 transferred them to this district. When this case was filed, Ms.
17 Richards knew she was not a member of this court's bar and had
18 misrepresented that she was a member of it.

19 2. Ms. Richards failed to file a fee disclosure as required
20 by section 329(a) and Rule 2016(b).

21 3. This case (and others) was filed without any intention
22 of prosecuting it to conclusion. It was filed solely to acquire
23 the automatic stay in order to hinder and delay a foreclosure and
24 an eviction. The court does not believe the assertion by Ms.
25 Richards or the debtor that this case was filed with the genuine
26 purpose of reorganizing the debtor's home loan or other finances.

27 Therefore, sanctions are appropriate. See Chambers v.
28 NASCO, Inc., 501 U.S. 32, 42-47 (1991); Caldwell v. Unified

1 Capital Corp. (In re Rainbow Magazine, Inc.), 77 F.3d 278, 284
2 (9th Cir. 1996); Knupfer v. Lindblade (In re Dyer), 322 F.3d
3 1178, 1196-1197 (9th Cir. 2003).


4 The court has already assessed \$1,000 in sanctions against
5 Ms. Richards pursuant to its Order to Show Cause of January 28,
6 2016. See Dockets 34 and 96. Ms. Richards paid the sanctions on
7 September 1, 2016 and also filed a belated disclosure of
8 compensation on September 15, 2016. The final issue is whether
9 an additional sanction is appropriate given conclusion 3
10 immediately above.

11 Rather than assess further monetary sanctions, the court
12 will bar Ms. Richards, effective from April 15, 2017, filing new
13 bankruptcy cases or proceedings in the Eastern District of
14 California until she has completed at least four hours of
15 continuing legal education in legal ethics that the State Bar of
16 California approves as meeting standards for Minimum Continuing
17 Legal Education, that is taught by a provider approved by the
18 State Bar, and that is not self-study but a participatory
19 activity for which the provider verifies attendance. Proof of
20 attendance shall be provided to the clerk of this court when the
21 four hours of education has been completed.

22 A final order shall issue.

23 Dated: February 28, 2017

By the Court

24
25 
26 Michael S. McManus
27 United States Bankruptcy Judge
28

**Instructions to Clerk of Court
Service List – Not Part of Order/Judgment**

The Clerk of Court is instructed to send the Order/Judgment or other court generated document transmitted herewith to the parties below. The Clerk of Court will send the Order via the BNC.

John A Dynowski
7445 Morningside Way
Citrus Heights CA 95621

Jan P. Johnson
PO Box 1708
Sacramento CA 95812

Office of the U.S. Trustee
Robert T Matsui United States
Courthouse
501 I Street, Room 7-500
Sacramento CA 95814

PennyMac Corp
c/o Aldridge Pite, LLP
4375 Jutland Drive #200
PO Box 17933
San Diego CA 92177-0933

Leslie Richards
17337 Ventura Blvd Suite 211
Encino CA 91316

Mark A. Wolff
8861 Williamson Dr #30
Elk Grove CA 95624-7920